IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 25TH JANUARY 2007 / 5TH MAGHA 1928

WP(C).No. 27125 of 2006(D)

PETITIONER:

THE DIVINE RETREAT CENTRE,
MURINGOOR P.O., CHALAKUDY,
REPRESENTED BY ITS DIRECTOR,
FR.GEORGE PANAKKAL.

BY ADV. SRI.M.K.DAMODARAN (SR.)
SRI.V.V.JOSHI
SRI.P.K.VIJAYAMOHANAN
SRI. S.SREEKUMAR (AMICUS CURIAE)

RESPONDENTS:

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1. THE STATE OF KERALA - REPRESENTED BY
THE CHIEF SECRETARY TO GOVERNMENT,
GOVERNMENT OF KERALA, SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE HOME SECRETARY,
GOVERNMENT OF KERALA,
SECRETARIAT, THIRUVANANTHAPURAM.

3. THE DIRECTOR GENERAL OF POLICE,
POLICE HEADQUARTERS, THIRUVANANTHAPURAM.

4. SRI.VINSON M.PAUL IPS,
MANAGING DIRECTOR,
KERALA POLICE HOUSING CONSTRUCTION CORPORATION,
THIRUVANANTHAPURAM.

BY D.G.P. SRI.P.G. THAMPI.
BY ADV. SRI.S. SREEKUMAR (SC FOR CBI) (AMICUS CURIAE)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R. BASANT, J.

W.P.(C) NO. 27125 OF 2006-D

Dated this the 25th day of January, 2007

JUDGMENT

This writ petition filed by the petitioner arises from the action taken by the Special Investigation Team headed by the 4th respondent. The team has been constituted by the Government on the basis of the directions issued by this Court in Crl.M.C.No.405/06 dated 10/3/2006. In the words of the petitioner, the prayers in the writ petition and the interim relief are as follows:

"PRAYERS

(i) to issue a writ, order or declaration holding that the raid search and seizure conducted by the Special Investigation Team on 30.9.2006 and 1.10.2006 in the Institution of the petitioner is illegal, void and unconstitutional;

(ii) to direct the 1st respondent and its officers respondents 2 to 4 to pay compensation of Rs. One Crore towards

the legal injury and damages caused to the institution and its inmates due to illegal action of the Special Investigation Team;

(iii) to declare that the 4th respondent or the persons conducting investigation under the 4th respondent have no authority or jurisdiction to conduct search and seizure at the Divine Retreat Centre to make out fishy search and enquiry to collect materials to implicate false charges and make false propaganda through the media against the petitioner;

(iv) to issue a writ, order or direction directing the 4th respondent not to publish the photographs/videographs taken of the inmates of the various institutions especially of females of the Divine Retreat Centre in the course of the search held on 30/9/2006 and 1/10/2006;

(v) to issue a writ, order or direction directing the 4th respondent to return the medicines and prescription seized from the petitioner in the course of the search held at the Centre on 30/9/2006 and 1/10/2006;

(vi) to issue a writ, order or

appropriate direction directing the respondents to ensure that the investigation as directed under Ext.P1 is concluded within a time frame to be stipulated by this Honourable Court;

(vii) to issue such other writ, order or direction as this Honourable Court may deem fit and proper in the facts and circumstances of the case.

INTERIM RELIEF

For the reasons stated in the writ petition and the affidavit accompanying the same, it is respectfully prayed that this Honourable Court may be pleased to direct the 1st respondent to award interim compensation of Rs.50 lakhs for setting right the injury caused to the Divine Retreat Centre and its inmates on account of the illegal raid, search and seizure, pending disposal of the Writ Petition."

2. Crl.M.C.No.405/06 was initiated by a learned Judge of this Court suo motu on the basis of an anonymous petition received. It is unnecessary to advert to the background in

which the learned Judge proceeded to pass the order dated 10/3/2006. What is important is the conclusions and directions that were ultimately issued by the Court. For the sake of convenience, I shall extract below the relevant conclusions and the operative portion of the order dated 10/3/06:

> "8. Considering all aspects of the matter, I am of the view that a Special Investigation Team headed by Sri. Vinson M. Paul IPS., Inspector General of Police, who is at present working as the Managing Director of Kerala Police Housing Construction Corporation, Thiruvananthapuram, is to be constituted to conduct investigation of Crime No.381 of 2005 of Koratty Police Station. The other members of the Team will be hand picked by Sri. Vinson M.Paul. The Director General of Police shall make available the services of other officers whom Sri. Vinson M. Paul requires. <u>The Special Investigation Team shall conduct investigation of Crime No.381 of 2005 of Koratty Police Station.</u> It is open to the Special Investigation Team to resort to the scientific methods such as Polygraph Test,

Brain mapping, (P.300 test), D.N.A. finger printing etc., while conducting the investigation.

9. Government shall issue a notification under Section 17 of the Prevention of Corruption Act conferring power to the Team to investigate the offences under the Prevention of Corruption Act also. The Special Investigation Team shall also enquire into the allegation of foreign exchange violation. The officers included in the Special Investigation Team shall not be disturbed unless and until the investigation of the case is over. Government shall provide the necessary infrastructure like fund, vehicles etc., to the Special Investigation Team. All Departments of the Government shall co-operate and render necessary assistance to the Special Investigation Team.

10. The Special Investigation Team shall also enquire into the allegations of unnatural deaths stated in the petition. The Team shall enquire as to whether a person by name Karyavelu worked in the burial ground and whether he died under

mysterious circumstances. If any case was registered in connection with the death of Karyavelu the present stage of that investigation shall be verified and appropriate action taken. The Team shall also enquire whether there was a person by name Binu attached to the Retreat Centre and whether he died under suspicious circumstances. In case the Team gets information regarding any cognizable offences, those matters shall also be investigated in accordance with law.

11. In the result, the following orders are passed:

The Government shall issue necessary orders constituting a Special Investigation Team headed by Sri.Vinson M. Paul IPS., Managing Director of Kerala Police Housing Construction Corporation, Thiruvananthapuram as expeditiously as possible, at any rate within two weeks from the date of receipt of a copy of the order. The other members of the Team will be selected by the head of the Team. As and when the team is constituted, either the head of the Team or the person

> authorised by him may collect the Compact Discs/Paper Cutting etc., enclosed along with the petition from this Court. The head of the Special Investigation Team shall file a preliminary report as to the action taken in the matter within one month from the date of constitution of the Team. It is open to the head of the Team or a person authorised by him to approach this Court for further direction or clarification if any, during the course of investigation. Forward copies of the order to the Government and Sri. Vinson M. Paul I.P.S., for necessary action".
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> (emphasis supplied)

3. It is significant that the petitioner or the Government or any other has not chosen to challenge the said order. The said order is in force. The learned counsel for the petitioner submits before me that the petitioner has not challenged the said order and has no intention of challenging the order now. The Special Investigation Team has been constituted by the Government. Reports have been filed by the Special Investigation Team. Directions have been issued in the matter by this Court earlier

on such reports.

4. Many objections have been taken against the order by many members of the public, organizations and leaders, it is submitted at the Bar. But what is relevant legally is that the said order has not been challenged by any one. The order therefore stands and is liable to be implemented.

5. I would have assumed that the petitioner – who is shown to be a religious, ecclesiastical and philanthropic organization, taking care of more than 25000 inmates every day who undergo spiritual, physical and psychological treatment, had chosen not to challenge the order dated 10/3/06 of this Court in its anxiety to get itself cleared of the allegedly false and baseless allegations raised against it. But that does not appear to be the truth. While sniping is resorted to at the order passed in Crl.M.C.405/06, there is no attempt, in accordance with law, made to challenge the order on merits. This writ petition reveals unmistakably that the absence of challenge does not stem from a desire to subject itself to any type of enquiry to get itself cleared of the allegations.

6. By the said order, the 4th respondent, as stated earlier, has been permitted to seek further directions from time to time

from this Court. At the time of hearing the learned Director General of Prosecutions on behalf of the 4th respondent submits that at the moment no further directions are necessary or sought.

7. Various persons have wanted to come on record. According to them, the petitioner herein is attempting to stall a proper enquiry/investigation on the basis of the order passed in Crl.M.C.No.405/06. This writ petition it is alleged is only an attempt to legally intimidate the 4th respondent to deter him from sincerely and efficiently discharging the duties assigned to him under the order dated 10/3/06, it is alleged. I am not persuaded to permit any one of such petitioners to come on record in this writ petition. All such requests are turned down. I.A.Nos.15046 and 15124 of 2006 filed by such petitioners are dismissed. It shall be open to them to furnish to the 4th respondent any relevant information which they have with them having a bearing on the investigation/enquiry which the 4th respondent is, under law, obliged to undertake.

8. The investigation/enquiry on the basis of the order dated 10/3/06 is in progress. The 4th respondent cannot be found fault with for conducting such investigation/enquiry. All

the powers legally available with him must certainly be pressed into service by him to carry out the directions issued by this Court in the said unchallenged order dated 10/3/06.

9. If the 4th respondent resorts to any illegal action, certainly the aggrieved party can take recourse to law. Such remedies/reliefs as are legally permissible can, of course, be sought by the petitioner herein also. In a writ petition under Art.226 of the Constitution, the aggrieved can seek the public law remedy of compensation also. But certainly such a direction for compensation will not be lightly granted. Any court will have to note that ordinarily and normally such relief of compensation is to be claimed through civil courts of law duly constituted, though in an exceptional case the constitutional powers can be invoked by this court to direct compensation and redress the grievance of an aggrieved person who complains of loss suffered by improper, mala fide and illegal exercise of powers vested in the State and its officials.

10. Of course, the fact that such alleged action is taken by the 4th respondent on the strength of an order passed by this Court will not clothe him with any immunity if it is shown that he is guilty of any improper, contumacious or mala fide conduct.

11. Thus, the crucial question is whether there is any satisfactory allegations or circumstances that can persuade this Court to issue any or all of the six directions sought against the 4th respondent and other respondents for action taken by the 4th respondent and the members of the Special Investigation Team on the basis of the unchallenged order passed by this Court in Crl.M.C.No.405/06.

12. We now have to consider what precisely is the cause of action alleged in this writ petition to justify the claim for compensation and other reliefs. One must again remind himself that the order dated 10/3/06 remains unchallenged. If the 4th respondent takes any action as permitted or as mandated under the unchallenged order dated 10/3/06, that cannot give rise to any cause of action.

13. The crux of the allegations is that on 30/9/06 and 1/10/06 an Inspection Team comprising of four Doctors assisted by the police personnel had visited the petitioner – establishment. They had allegedly gone round the petitioner – establishment and had inspected the premises and perused the documents. They had allegedly taken some documents/ medicines into their custody. The Team which went to visit the

establishment on 30/9/06 and 1/10/06 comprised of four Doctors. The police personnel also accompanied them. It is contended that such visit by them was really not an innocent or innocuous visit; but amounted to search and seizure. The procedure prescribed for such search and seizure had not been followed. Such visit by the Team amounts to denial of human rights. Right to privacy has been offended. A roving enquiry is being conducted to ascertain whether any impropriety has been committed by the petitioner. This amounts to denial/infringement of the fundamental right under Art.21 of the Constitution. Such inspection was widely publicised. Such inspection affects the morale and the reputation of the petitioner – establishment. It offends the privacy of the inmates. It offends religious freedom of the petitioner and the inmates. It is, in these circumstances, that the relief extracted above are claimed.

14. I have heard the learned counsel for the petitioner Sri.M.K. Damodaran and the learned Director General of Prosecutions Sri.P.G. Thampi. I had requested Sri.S. Sreekumar, Standing Counsel for the C.B.I. to appear as amicus curiae and

assist this Court. He has been heard.

15. The 4th respondent has explained to the Court his version of what actually had taken place on 30/9/06 and 1/10/06. He feels that he is bound and obliged under law to carry out the directions of this Court in the order dated 10/3/06. If he were to effectively carry out such directions, he has to study the working of the institution. For that purpose, he wanted a duly constituted medical team to inspect the establishment and ascertain certain details. Such ascertainment of details is absolutely essential for discharging the onerous responsibility placed on his shoulders by the unchallenged order of this Court. No search has been conducted. No seizure has been effected. No raid as alleged had taken place. The 4th respondent had addressed the Director of Health Services to constitute a medical team to inspect the institution run by the petitioner and submit a report. A team of medical officials has been constituted by the Director of Health Services. They had inspected the petitioner – establishment on 30/9/06 and 1/10/06. After such inspection, they have submitted reports. The Special Investigation Team is considering the further action to be conducted. The Special Investigation Team had not publicised the result of the

inspection. The petitioner – establishment has religious overtones and the 4th respondent was alertly conscious of the possible fallout from such inspection. To ensure transparency, the inspection by the medical team had been videographed. It was not published by the 4th respondent or any official under him. It may be true that some media personnel had also videographed. The police have no right to forbid the media persons from entering the petitioner's premises. It is zealously ensured that no information is furnished to the media by the members of the Special Investigation Team. The inspection was not conducted by the Special Investigation Team; but was conducted by a team of medical officials constituted by the Director of Health Services at the instance of the 4th respondent. 12 police officials including a woman Police Constable and a Superintendent of Police were available in plain clothes to assist the members of the medical team in the course of their visit/inspection. They have in no way interfered with the working of the institutions. They have in no way vexed or harassed the inmates, the volunteers, officers or staff of the petitioner.

16. The 4th respondent submits that the allegations raised

in respect of the inspection are all false and are raised with the transparent intention of intimidating and threatening the 4th respondent from carrying out a proper and legal investigation/ enquiry as directed by this Court in the order dated 10/3/06.

17. Copies of the reports of the medical team and the order constituting the medical team have all been placed before this Court for perusal.

18. The crucial question is whether the 4th respondent or any one acting under the 4th respondent on the strength of the unchallenged order dated 10/3/06 is guilty of any indiscretion which would give rise to a valid cause of action to claim compensation in public law. Having considered the entire materials available, I am unable to find any specific act of impropriety or illegality or any act without authority committed by the 4th respondent and his team. At any rate, nothing has been brought to my notice which would persuade this Court to invoke the powers under Art.226 of the Constitution to grant any relief as claimed in this writ petition. The disputed and complicated questions of fact cannot be attempted to be resolved in proceedings under Art.226 of the Constitution. No compelling reason is shown as to why such a dispute regarding facts has to

be attempted to be resolved in this writ petition. Normally, any person who claims to be aggrieved by the conduct of a public servant must resort to the ordinary remedies available under law. I find no reason to deviate from that principle in the facts and circumstances of this case.

19. Prayer No. (i) to declare the acts performed by the Special Investigation Team on 30/9/06 and 1/10/06 cannot hence succeed. Prayer No.(ii) for a direction to pay an amount of Rupees One Crore to the petitioner cannot also succeed. The bizarre and fanciful claim, without any basis probabilises the contention that the real attempt is to resort to intimidation by initiation of legal proceedings. The third prayer to declare that the 4th respondent and the members of his Inspection Team have no authority to inspect the petitioner's premises would be negation of the order dated 10/3/06. The petitioner who is not aggrieved by the order dated 10/3/06 passed by a learned Single Judge cannot attempt to challenge the said order before another Single Judge Bench of the same Court. Prayer No.(iv) to issue an order to the 4th respondent not to publicise the photographs and videographs is found to be unnecessary and unsustainable as the 4th respondent undertakes that he has no intention and is not

shown to have published such photographs or videographs at any time. The 5th prayer for return of medicines and prescriptions taken by the team on 30/9/06 and 1/10/06 is found to be unsustainable inasmuch as the team does have the legal competence to keep such medicines and prescriptions to ascertain whether there has been any violation of the relevant provisions in respect of the transaction of such medicines and prescriptions. At any rate, I am not satisfied that the powers under Art.226 of the Constitution can or need be invoked to grant prayer No.(v) at this stage. The 6th prayer made is that it may be ensured that the investigation/enquiry is completed as per the order dated 10/3/06 as expeditiously as possible. I am satisfied that the said request is justified. But considering the nature of the challenge before the 4th respondent as indicated in the unchallenged order dated 10/3/06 it would be imprudent and inexpedient for this Court to fix any particular time limit. Prayers (i) to (vi) cannot, in these circumstances, be granted.

20. I find merit in the apprehension aired by the 4th respondent that the very purpose of this petition is to legally intimidate and threaten the Special Investigation Team. The petitioner who has not challenged the order dated 10/3/06 is

attempting to virtually thwart and frustrate the order dated 10/3/06 by initiating proceedings against the 4th respondent. My learned brother appears to have been conscious of the nature of the challenge before the Special Investigation Team and that explains why the court had resorted to the unprecedented course of specifying the officer who should take up the investigation. I repeat that the said direction remains unchallenged. The 4th respondent must be presumed to be made of sterner stuff and should not succumb to any alleged attempt by any one to cow him down and to deter him from properly discharging his duties under the order dated 10/3/06 which remains unchallenged. Of course, the 4th respondent can exercise only such powers as are legally available to him under law and under the directions issued by this Court. He must alertly be conscious of his the additional sublime burden of responsibility on him to act efficiently but within the law strictly, he having been chosen by the Court to accomplish this onerous responsibility.

21. I refuse to be dragged into a controversy as to whether the order dated 10/3/06 can clothe the petitioner with any particular power. Suffice it to say that my learned brother had intended that the Special Investigation Team must discharge

their duties only in accordance with law. Absolutely nothing has been placed before me to show that the 4th respondent has overstepped the mandate under the impugned order dated 10/3/06. So long as the order dated 10/3/06 stands – no party having chosen to challenge the same, the 4th respondent is bound to discharge his duties under that order conscientiously. I expect him to do that.

22. What are the powers of the 4th respondent? I do not intend to be exhaustive. He has been directed to conduct investigation into a specific crime. He has been directed to conduct enquiry into alleged unnatural deaths. He has been directed to be watchful and ascertain whether there is materials to indicate the commission of any other cognizable crimes. He is competent to conduct preliminary enquiries under the Prevention of Corruption Act. He can suo motu register crimes if he comes across materials to indicate the commission of any crimes. I am not to list out such powers that he has. I need only say that the action taken on 30/9/06 and 1/10/06 do not appear to me to be beyond his jurisdictional competence as an Investigating Officer under the Code of Criminal Procedure and as a person to whom specific directions have been issued under

the unchallenged order dated 10/3/06.

23. An attempt is made to contend that the petitioner – establishment is a religious institution and the attempt made by the 4th respondent under the impugned order affects the freedom of religion. In a secular polity, all institutions whether religious or otherwise are expected to function under law and no one can resist any attempt of investigation/enquiry into the crimes/irregularities committed by them on the plea that the institution is a religious one. That the petitioner is a religious establishment cannot afford any protection against the due process of law. In a society wedded to rule of law, which we are, no one, how high soever he be is beyond law. Religious institutions are also not above the law. The generation of such an impression and acceptance of the same would amount to negation of rule of the law. Myopic public activists with an eye on the ballot box may collaborate to whip up the cry of religion in danger; but it cannot be forgotten that the danger to religion is only averted when there is proper investigation/enquiry and truth is brought out. Greater maturity on the part of social and political activists is expected and if that be so, one would have expected the petitioner and all others to co-operate with the

enquiry/investigation under the unchallenged order so that any cloud over the petitioner – institution is cleared by such an enquiry/investigation.

24. I may hasten to observe that I have ignored the arguments in the nature of challenge against the order dated 10/3/06 as the said unchallenged order cannot be sought to be challenged before me in this writ petition.

25. No directions are sought by the 4th respondent regarding implementation of the order dated 10/3/06. It is not necessary for me hence to advert in detail to the nature of such power. Suffice it to say that I find absolutely nothing illegal in the exercise of the power by the 4th respondent in pursuance of the order dated 10/3/06 so far justifying the granting of any relief by invoking the powers under Art.226 of the Constitution.

26. This writ petition is, in these circumstances, dismissed.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge